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8 **BEFORE THE**
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. OT2010-303

11 **SCOTT NELSON KEMP**
12 **1511 Shaw Drive**
13 **San Jose, CA 95118**
Occupational Therapist License No. OT 941

A C C U S A T I O N

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Heather Martin (Complainant) brings this Accusation solely in her official capacity as
19 the Executive Officer of the California Board of Occupational Therapy, Department of Consumer
20 Affairs.

21 2. On or about July 3, 2002, the California Board of Occupational Therapy issued
22 Occupational Therapist License Number OT 941 to Scott Nelson Kemp (Respondent). The
23 Occupational Therapist License was in full force and effect at all times relevant to the charges
24 brought herein and will expire on October 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the California Board of Occupational Therapy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2570.27. of the Code states:

"(a) The board may discipline a licensee by any or a combination of the following methods:

"(1) Placing the license on probation with terms and conditions.

"(2) Suspending the license and the right to practice occupational therapy for a period not to exceed one year.

"(3) Revoking the license.

"(4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.

"(5) Taking other action as the board, in its discretion, deems proper.

...."

5. Section 2570.30 of the Code states:

"The board shall retain jurisdiction to proceed with any investigation, action or disciplinary proceeding against a license, or to render a decision suspending or revoking a license, regardless of the expiration, lapse, or suspension of the license by operation of law, by order or decision of the board or a court of law, or by the voluntary surrender of a license by the licensee."

6. Section 118(b) of the Code states:

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

STATUTORY AND REGULATORY PROVISIONS

7. Section 141 of the Code states:

"(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

"(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country."

8. Section 2570.28 states:

"The board may deny or discipline a licensee for any of the following:

"(a) Unprofessional conduct, including, but not limited to, the following:

"....

"(5) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a licensee by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence thereof.

"....

"(h) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a licensee.

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1 9. Section 2570.29 states:

2 "In addition to other acts constituting unprofessional conduct within the meaning of this
3 chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the
4 following:

5 "(a) Obtain or possess in violation of law, or prescribe, or, except as directed by a
6 licensed physician and surgeon, dentist, optometrist, or podiatrist, to administer to himself or
7 herself, or furnish or administer to another, any controlled substance as defined in Division 10
8 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or
9 dangerous device as defined in Section 4022.

10 "(b) Use to an extent or in a manner dangerous or injurious to himself or herself, to
11 any other person, or to the public, or that impairs his or her ability to conduct with safety to the
12 public the practice authorized by his or her license, of any of the following:

13 "(1) A controlled substance as defined in Division 10 (commencing with Section
14 11000) of the Health and Safety Code.

15 "(2) A dangerous drug or dangerous device as defined in Section 4022.

16 "

17 10. California Code of Regulations, title 16, section 4100(i) states:

18 "For the purposes of denial, suspension, or revocation of a license, a crime or act shall be
19 considered to be substantially related to the qualifications, functions or duties of an occupational
20 therapy practitioner, if it evidences present or potential unfitness of a licensee to perform the
21 functions authorized by his or her license or in a manner inconsistent with the public health,
22 safety, or welfare. Such crimes or acts include but are not limited to those involving the
23 following:

24 "....

25 "(2) Fiscal dishonesty, theft or larceny.

26 "(3) An incident involving controlled substances to the extent that practice is impaired or a
27 threat to the health or safety of themselves or others.

28 "

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 11. Respondent is subject to disciplinary action under section 2570.28(a) of the Code in
4 that Respondent engaged in unprofessional conduct. Specifically:

5 12. In or around July of 2009, Respondent — at the time a co-owner/manager of Apex In-
6 Home Care Agency — stole prescription medication (Xanax) from an elderly client of the
7 agency.

8 13. Respondent subsequently consumed all 90 of the stolen pills during the course of a
9 week, thereby significantly altering his ability to function.

10 14. Respondent's Oregon Occupational Therapy License No. 1059026 was later
11 disciplined for this conduct, including a two-year suspension of Respondent's right to practice.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Suspension of Licensure in Another State)**

14 15. Respondent is subject to disciplinary action under sections 141 and 2570.28(a)(5) of
15 the Code and Title 16, section 4100(i), California Code of Regulations, in that Respondent had
16 his license disciplined in another state for an act substantially related to the practice of
17 occupational therapy. The circumstances are described above in the First Cause for Discipline.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Commission of Dishonest Act)**

20 16. Respondent is subject to disciplinary action under section 2570.28 of the Code and
21 Title 16, section 4100(i), California Code of Regulations, in that Respondent committed a
22 dishonest act substantially related to the qualifications, functions, or duties of a licensee. The
23 circumstances are described above in the First Cause for Discipline.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Obtaining or Possessing Controlled Substance or Dangerous Drug)**

26 17. Respondent is subject to disciplinary action under section 2570.29(a) of the Code in
27 that Respondent obtained and/or possessed a controlled substance and/or dangerous drug in
28 violation of law. The circumstances are described above in the First Cause for Discipline.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Use of Controlled Substance)**

3 18. Respondent is subject to disciplinary action under section 2570.29(b) of the Code in
4 that Respondent used a controlled substance to an extent or in a manner dangerous to himself or
5 to another. The circumstances are described above in the First Cause for Discipline.

6 **PRAYER**


7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the California Board of Occupational Therapy issue a decision:

9 1. Revoking or suspending Occupational Therapist License Number OT 941, issued to
10 Scott Nelson Kemp;

11 2. Ordering Scott Nelson Kemp to pay the California Board of Occupational Therapy
12 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
13 Professions Code section 125.3;

14 3. Taking such other and further action as deemed necessary and proper.

15 DATED: 22 April 2011

16 
17 HEATHER MARTIN
18 Executive Officer
19 California Board of Occupational Therapy
20 Department of Consumer Affairs
21 State of California
22 Complainant

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